

DEC 7 2005

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

U. S. DISTRICT COURT,  
W. DIST. OF N. C.

**W. WELLS VAN PELT, JR.**

**Plaintiff,**

**V.**

**UBS FINANCIAL SERVICES INC.,**

**Defendant.**

**Case No.:**  
**05CV447-K**

**MOTION TO VACATE**

Defendant UBS Financial Services Inc. (“UBS”), pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, et seq., moves this Court to vacate the award rendered in the National Association of Securities Dealers (“NASD”) Dispute Resolution arbitration proceeding styled W. Wells Van Pelt, Jr. v. UBS Financial Services Inc., et al., NASD Dispute Resolution Arbitration Number 04-00619 (the “Award”), on the following grounds:

- (1) there was evident partiality in the arbitrators;
- (2) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy;
- (3) the arbitrators exceeded their powers;
- (4) the Award is irrational and evidences a manifest disregard of the law;
- (5) the Award violates well-established public policy; and
- (6) the Award fails to draw its essence from the applicable agreements.

UBS will file a memorandum of law with exhibits in further support of this Motion, which UBS incorporates by reference as if set forth in full herein.<sup>1</sup>

<sup>1</sup> The Court waived Local Civil Rule 7.2 with respect to UBS' memorandum of law in support of this Motion, which would have required UBS to file its memorandum of law contemporaneously with the filing of this Motion, during a conference call with the parties on December 2, 2005.

**WHEREFORE**, defendant UBS Financial Services Inc. prays that this Court will enter an Order vacating the award rendered in the National Association of Securities Dealers Dispute Resolution arbitration proceeding styled W. Wells Van Pelt, Jr. v. UBS Financial Services Inc., et al., NASD Dispute Resolution Arbitration Number 04-00619.



George C. Covington

William O. L. Hutchinson

Erika A. Olson

KENNEDY COVINGTON LOBDELL &  
HICKMAN, LLP

Hearst Tower, 47<sup>th</sup> Floor

214 N. Tryon Street

Charlotte, North Carolina 28202

Telephone: (704) 331-7400

Facsimile: (704) 353-3132

Attorneys for Defendant

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was this date served upon all known counsel of record by placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address as follows:

Andrew O. Whiteman  
Hartzell & Whiteman, L.L.P.  
2626 Glenwood Avenue, Suite 500  
Raleigh, North Carolina 27608

Sarah G. Anderson  
Clawson & Staubes, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, South Carolina 29492-7595

Charles P. Murdter  
1050 Connecticut Avenue  
Suite 1000  
Washington, DC 20036

Charlotte, North Carolina, this 7<sup>th</sup> day of December, 2005.

  
William O. L. Hutchinson